

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
October 21, 2009 Session

STATE OF TENNESSEE v. MYRON LORENZO JOHNSON

Appeal from the Criminal Court for Davidson County
No. 2006-A-396 Mark J. Fishburn, Judge

No. M2008-02198-CCA-R3-CD - Filed February 12, 2010

The Defendant, Myron Lorenzo Johnson, was convicted by a Davidson County jury of first degree premeditated murder, first degree felony murder, and especially aggravated robbery. The trial court merged the convictions for first degree premeditated murder and felony murder. For these convictions, the Defendant received an effective sentence of life imprisonment plus sixty years. In this direct appeal, the Defendant raises the following issues for our review: (1) whether the trial court erred in denying his motion for a mistrial after the victim's mother fainted in front of the jury; and (2) whether the trial court erred under Tennessee Rule of Evidence 404(b) by allowing testimony that the Defendant was involved in the drug trade. Following a review of the record and the applicable authorities, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the Court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, Myron Lorenzo Johnson.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Sarah Davis, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On July 22, 2001, Detective Brad Corcoran with the Nashville Metropolitan Police Department was called to the scene of an abandoned truck off Old Hickory Boulevard. The body of the victim, Eugene “Juan” McAdams, was discovered in the bed of the truck covered with a white sheet; his ankles and wrists had been duct-taped. Following an autopsy, the cause of death was determined to be asphyxia and blunt force trauma to the head.

Initially, investigators were unable to develop a suspect. Several years later, Alvin Stokes, aka “Brother Gold,” was facing federal drug trafficking charges. In the hopes of receiving favorable consideration on his sentence, Stokes provided Detective Derry Baltimore with the names of the Defendant, Christopher Nunley, and Paul Anderson as the possible perpetrators of the killing of the victim. Detective Baltimore interviewed Nunley on February 17, 2005. Nunley took Det. Baltimore to the house where the murder occurred, and Det. Baltimore also verified Nunley’s phone number. After interviewing Nunley, Det. Baltimore proceeded to interview Anderson on May 12, 2005. Anderson provided details about the murder of the victim.

Anderson testified against the Defendant at trial. Anderson stated that he met the Defendant in 2000, and the two became good friends. Anderson moved into the Defendant’s girlfriend’s house, and Anderson confirmed that he was drug addict during this time. He had also met Nunley on at least two occasions prior to the murder and knew him as “Skinny.” According to Anderson, the Defendant and Nunley were involved together in the sale of drugs, and they often went to Stokes to get drugs.

On July 20, 2001, around 10:00 a.m., the Defendant came over to the place where Anderson was temporarily residing. The Defendant made a proposition to Anderson: In exchange for \$500 and an ounce of cocaine, Anderson was to set up a drug deal with the victim and rob him of his drugs and money.

Anderson stated that the Defendant and Nunley were angry with the victim because he had tried to go around them in the drug trade; normally, they would purchase cocaine from the victim for \$22,000 and then sell it for \$26,000. However, the victim had slipped a note into the cocaine, providing a cell phone number and stating to the second buyer to deal with the victim directly. Anderson did not know the victim prior to July 20.

Nunley called the victim and arranged the deal. The plan was for Anderson to arrive to purchase four ounces of cocaine from the victim, but instead he would rob everyone. They were to later split the drugs and money. The Defendant arrived in his truck with Nunley

around 7:00 p.m. that evening to pick up Anderson, and they went to Nunley's house. However, the Defendant and Nunley stated that they wanted to change the amount to eighteen ounces, "a half of key." Anderson no longer wanted to participate because he feared that there would be repercussions for stealing such a large amount of cocaine. The Defendant instructed him to be quiet and sit down; Anderson complied. Nunley phoned the victim requesting the increased amount of cocaine.

While they were waiting on the victim to arrive, the Defendant went out to his truck and retrieved a shotgun and a white bag. Inside the bag was a box of latex gloves. The Defendant placed the bag and the gloves on the top of the refrigerator. The victim then entered the house and asked Anderson, "Do you want to buy some dope?" According to Anderson, the Defendant then jumped up from the table and hit the victim in the head with the butt of the shotgun, rendering the victim unconscious. As soon as the victim fell to the floor, Nunley put on a pair of gloves and began wrapping duct tape around the victim's head. The Defendant also put on gloves. They taped the victim's head "completely up," also taping his hands and feet. When the victim started to come to, he was unable to breathe and began "flopping around just like a fish dying" The victim soon ceased moving.

The Defendant then removed a gold necklace from around the victim's neck. The Defendant went outside to the victim's truck; meanwhile, Nunley was cleaning up blood on the floor. Thereafter, they carried the victim to a bedroom window and pushed him out the window into the bed of the victim's truck. Nunley handed the Defendant a sheet, which he wrapped around the victim. The men then left the house; Nunley driving the victim's truck, and the Defendant driving his truck with Anderson as a passenger. They drove to Old Hickory Boulevard near Blueberry Hill and left the truck on the side of the road. The Defendant took the victim's compact disc case out of his truck. Nunley got into the Defendant's vehicle, and they returned to the Defendant's girlfriend's house. The Defendant and Anderson showered, and the Defendant collected their clothes. Nunley then left after receiving his share of the cocaine; the Defendant took Anderson back to Anderson's place. The next day, the Defendant gave Anderson cocaine and money and rented Anderson a room in a local motel. Anderson later told Stokes about the murder.

In September 2007, the Defendant and Anderson were being transported on a bus together. Anderson was in protective custody, separated from the Defendant by a cage. The Defendant yelled threats at Anderson, warning him not to testify against him. Inmate Timothy Flener was present on the bus and heard these threats. He was also placed in a cell with the Defendant following the bus ride, and the Defendant told Flener that he and Anderson were involved in a murder together.

The Defendant's wife and former girlfriend in July 2001, Tammi Renee Battle, was shown a box of gloves. She confirmed that the box in the photograph was the same type of gloves that she had brought home from work.

Medical Examiner Dr. Thomas Deering testified as to the victim's cause of the death. He also stated that, when a person was losing the ability to breathe, they might start thrashing around.

A check of Nunley's phone records showed that Nunley phoned the victim on the day of his murder. The victim's phone records revealed that the victim had phoned Nunley several times the evening he was murdered.

Jafton Richardson, an inmate serving a sentence for practicing law without a license, testified that, while incarcerated, the Defendant told him he was involved in a homicide at Nunley's house. The Defendant relayed that there was a phone call to the victim, and he was to meet with them at the house for a drug deal. However, they intended to rob him of his drugs and weapons, but instead the victim was hit in the head with the butt of a shotgun and died. The Defendant also stated that he wore gloves during the robbery and that he got the gloves from his wife who worked at a hospital. According to Richardson, the Defendant's attitude about the murder was "nonchalant."

Later, the Defendant came to Richardson in jail and asked him to sign an affidavit that the Defendant had never spoken to him about the murder. Richardson complied because he feared for the safety of his family.

The Defendant testified on his own behalf, asserting that he had no involvement in the murder of the victim. He denied that he ever knew the victim, asserted that he never sold drugs, and claimed that he never owned a shotgun.

Following the conclusion of the proof, the jury found the Defendant guilty as charged. The trial court merged the felony murder and premeditated murder counts. The Defendant was sentenced to life imprisonment for the murder plus sixty years for especially aggravated robbery. This appeal followed.

I. Mistrial

The Defendant claims that the trial court erred by refusing to declare a mistrial after the victim's mother, Ms. Patricia Ann Eutsey, fainted in the jury's presence. Ms. Eutsey had already testified in the Defendant's trial and had told the jury that she was the mother of the

victim.¹ Although the trial court gave a curative instruction, the Defendant argues that the instruction did not eliminate the prejudice caused by a member of the victim's family fainting in open court. The State claims that the trial court properly denied the Defendant's request for a mistrial. We agree with the State.

During the testimony of the medical examiner, the victim's mother had a "medical issue." At the time this occurred, Dr. Derring was explaining the cause of death of the victim, blunt force injuries to the head and asphyxia. The jury left the courtroom, and Dr. Deering assisted Ms. Eutsey until further assistance could be rendered.

When the jury returned to the courtroom, the trial court made the following statements to the jury:

All right. I think I mentioned to you on Monday that we try to anticipate as many things as we can before a trial starts but there is always things that happen unexpectedly, and that was certainly unexpected.

First of all, Dr. Deering responded to her immediately, to Ms. Eutsey immediately, and we had her sitting up and she appeared to be better. She was complaining of some small chest pain, apparently, as she was trying to go outside.

She is sitting outside and they are giving her a little oxygen. The paramedics are on their way over to check her vital signs and check everything just to make sure there is nothing wrong, but as best we can determine from in here she is going to be fine. It is very important that you not allow what occurred to influence the way you are looking at things in any manner, whatsoever.

I am sure it surprised some people and may have caused some emotions as a result of what happened to her, but you can't let that influence the way you are hearing the testimony of Dr. Deering or for any other reason in this trial. We should have an update before you leave and we will let you know what her status is. All right.

The prosecutor then continued with his direct examination of the medical examiner. Later that day, the trial court updated the jury on Ms. Eutsey's condition:

¹ The Defendant properly notes that the trial court incorrectly stated at the motion for a new trial hearing that there was no information before the jury that Ms. Eutsey was the victim's mother.

Members of the jury, by the way, I just wanted to let you know that Ms. Eutsey received a clean bill of health. Her heart rate was up a little bit but, otherwise, her vital signs were fine and the paramedics said that there wasn't any need to take her to the hospital or anything so, apparently, she [is] going to be fine.

When court reconvened the next morning, the Defendant requested a mistrial. The Defendant argued that a mistrial was warranted because the display had prejudiced the jury against him. The State argued that a mistrial was not necessary because the trial court had sufficiently addressed the situation when it happened by immediately admonishing the jury not to let it influence them in any way and by later providing the jury with an update of Ms. Eutsey's condition. The trial court overruled the Defendant's motion for a mistrial, ruling as follows:

Yes, it was an unfortunate and unexpected situation. I observed the jury when they came back in and there was a few that certainly suggested to the court that they were concerned about Ms. Eutsey.

The court did not read anything into it that they had a vendetta for anyone as a result of the incident involving Ms. Eutsey. I guess, for the record because I don't know that it has been on the record, but, basically, Ms. Eutsey appeared to pass out. She recovered terribly quickly and medical personnel were—well, one, Dr. Deering was here testifying at the time and attended to her, and then she was taken outside to allow the EMS [to] attend to her.

The concerns I saw on the faces of the jury was just for her well-being as it related to this trial and how it might affect her perceptions of the trial. I also watched them closely when I was attempting to give a curative instruction to make them fully understand that that incident could have no affect on the way they viewed the evidence in this case, and that they should not allow their emotions to overrule the evidence and the law. They—generally all of them were nodding and the court was under the impression that they fully understood that.

In addition, the court will, in its final jury charge, instruct them again that they cannot allow their sympathies or prejudices or anything else to interfere with the requirement that they have as jurors, and that is to render a

verdict based on the law that they are provided and the evidence they hear during the course of the trial.²

In a criminal trial, a mistrial should only be declared “in the event of a ‘manifest necessity’ that requires such action.” State v. Reid, 164 S.W.3d 286, 341 (Tenn. 2005) (quoting State v. Hall, 976 S.W.2d 121, 147 (Tenn. 1998)). “The purpose for declaring a mistrial is to correct damage done to the judicial process when some event has occurred which precludes an impartial verdict.” State v. Williams, 929 S.W.2d 385, 388 (Tenn. Crim. App. 1996). An abstract formula should not be applied mechanically in determining whether a mistrial was necessary, and all relevant circumstances should be taken into account. State v. Mounce, 859 S.W.2d 319, 322 (Tenn. 1993). Whether a mistrial should be granted is a determination left to the sound discretion of the trial court. Reid, 164 S.W.3d at 342 (citing State v. Smith, 871 S.W.2d 667, 672 (Tenn. 1994)). The trial court’s decision should not be overturned absent an abuse of discretion. Id. Additionally, the party arguing that a mistrial should have been granted bears the burden of establishing its necessity. Id. (citing Williams, 929 S.W.2d at 388).

In the present case, no one could have predicted that the victim’s mother would faint when she did. While unfortunate, there is, however, no indication that the victim’s mother or the State orchestrated this action for the jury’s benefit. Moreover, the trial court gave a prompt curative instruction. The court admonished the jury to render its verdict on the basis of the testimony and instructions and to put aside prejudice, sympathy, and the like. The jury is presumed to follow the instructions of the court. See State v. Banks, 271 S.W.3d 90, 134 (Tenn. 2008) (citations omitted). Based on our review and under these circumstances, we conclude that it was not an abuse of discretion for the trial court to deny the Defendant’s request for a mistrial following the victim’s mother’s collapse in the jury’s presence. See generally State v. Adkins, 786 S.W.2d 642, 644 (Tenn. 1990) (holding that a mistrial was not required following a witness’s outburst where the trial court took immediate action to dispel prejudice); State v. Terrence McCray, No. W2005-00479-CCA-R3-CD, 2006 WL 2567483, at *6-8 (Tenn. Crim. App., Jackson, Sept. 5, 2006) (no error occurred where the trial court denied a request for a mistrial after an emotional display by the victim’s aunt, who had fallen on the floor; the jury was led from the courtroom and, upon their return, a curative instruction was given); State v. James Cleveland Breer, No. W2001-00390-CCA-R3-CD, 2002 WL 1482796, at *11-12 (Tenn. Crim. App., Jackson, Feb. 7, 2002) (holding that the trial court

² A transcription of the final jury charge is not a part of the record on appeal.

did not abuse its discretion in refusing to grant a mistrial after an emotional outburst by the victim's grandmother).³

The Defendant is not entitled to relief on this issue.

II. Character Evidence

The Defendant contends that the trial court erred under Tennessee Rule of Evidence 404(b) by admitting testimony that the Defendant was a drug dealer. The Defendant argues that this was improper character evidence that was prejudicial to his case. The State counters that the trial court correctly ruled that the testimony established the Defendant's motive and his association with this accomplices and the victim. Again, we agree with the State.

Rule 404(b) of the Tennessee Rules of Evidence provides as follows:

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person or to show action in conformity with the character trait. It may, however, be admissible for other purposes. The conditions which must be satisfied before allowing such evidence are:

(1) The court upon request must hold a hearing outside the jury's presence;

(2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence;

(3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and

(4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

³ The State correctly argues that the Defendant's citation to a federal habeas corpus case, Miles v. Dorsey, 61 F.3d 1459, 1464 (10th Cir. 1995), in support of his proposition that a mistrial was warranted is misplaced. The court in that case only noted that the Petitioner's mother collapsed during the separate trial of the Petitioner's father and mother, resulting in a mistrial; however, the court did not address whether this was an appropriate outcome or in any way address the legal or factual issues involved herein.

While evidence of a prior crime, wrong, or act is not admissible to prove that a defendant had the propensity or disposition to commit the crime, it may be relevant and admissible to prove issues such as identity, intent, motive, opportunity, or absence of mistake or accident. See State v. Shropshire, 45 S.W.3d 64, 75 (Tenn. Crim. App. 2000). Where the trial court has been called to pass upon the admissibility of evidence of other crimes, wrongs, or acts under Rule 404(b), its determination is entitled to deference when it has substantially complied with the procedural requisites of Rule 404(b). State v. Thacker, 164 S.W.3d 208, 240 (Tenn. 2005) (citing State v. DuBose, 953 S.W.2d 649, 652 (Tenn. 1997)).

The Defendant argues that the only purpose for introducing evidence of his drug trafficking was as propensity evidence; the Defendant specifically cites to testimony from Alvin Stokes and Paul Anderson as prejudicial. Anderson was the State's key witness, and Stokes testified that he was involved in drug sales with the Defendant and Nunley.

The Defendant was indicted for first degree premeditated murder and felony murder during the commission of a robbery. The State's theory was that the victim and the Defendant were involved in a drug enterprise, that the murder was retribution for the victim attempting to circumvent the Defendant in the drug trade, and that the Defendant and his accomplices intended to take the victim's drugs and money. The State was required to prove that the killing of the victim was premeditated and intentional or that the killing was committed in the perpetration of or attempt to perpetrate a robbery. See Tenn. Code Ann. § 39-13-202(a)(1), (2). The theory of defense was that the State's witnesses were attempting to frame the Defendant for the murder in order to receive favorable treatment from the State in various criminal prosecutions against those witnesses. The Defendant denied association with these witnesses, denied knowing the victim, and testified that he was not a drug dealer.

Prior to the testimony of Alvin Stokes, the trial judge held a hearing outside the jury's presence to determine whether the probative value outweighed the prejudicial effect of the evidence as required by Rule 404(b)(1), Tennessee Rules of Evidence. The trial judge found that the evidence was relevant for the purpose of establishing the relationship between the parties and to establish motive. The trial judge also held that the probative value was not substantially outweighed by the danger of unfair prejudice. Furthermore, after the evidence was admitted, the trial judge properly instructed the jurors that testimony concerning the drug dealing could only be considered as evidence of motive for the killing and to place the relationships of the parties in context, and that it could not be considered to establish that the Defendant had any propensity to be involved in any other criminal activity. Anderson testified as the next witness after Stokes, which was immediately following the instruction given by the trial court.

In our view, there was no abuse of discretion in admitting evidence of the drug sales relationship between the Defendant, the victim, and the witnesses. Stokes' testimony showed that the Defendant knew Nunley and that they sold drugs together. Paul Anderson's testimony necessarily established that the Defendant and Nunley murdered the victim because the victim had attempted to undercut them in the drug trade and because the victim had a large amount of drugs on his person, which the Defendant wanted to appropriate to his business. The State was entitled to develop its theory of the Defendant's motive for shooting the victim. Moreover, the trial court gave the jury a limiting instruction as to how to consider this evidence. See State v. Jordan, 116 S.W.3d 8, 18 (Tenn. Crim. App. 2003) (observing that jurors are presumed to follow the instructions given them absent evidence to the contrary). We conclude that the probative value of the evidence was not outweighed by the danger of unfair prejudice. See generally State v. Jackie Lee Redd, No. 03C019101CR007, 1991 WL 136316, at *3 (Tenn. Crim. App., Knoxville, July 25, 1991) (holding that evidence of a drug partnership between defendant and victim was properly admitted to show motive). Accordingly, this evidence was properly admitted.

CONCLUSION

In consideration of the foregoing, we conclude that denial of the Defendant's motion for a mistrial was not error and that the evidence of the drug dealing was properly admitted. The judgments of the Davidson County Criminal Court are affirmed.

DAVID H. WELLES, JUDGE